THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5296 OF 2005

DATED 26th OCTOBER, 2006

BETWEEN

Malloju Krishna

… Petitioner

and

The District Collector, Eluru, West Godavari District and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.5296 OF 2005

ORDER:

The writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in demolishing the petitioner's thatched house bearing No.2-51 in R.S.No.211 over an extent of land admeasuring Acs.0.03½ cents situated at Kannapuram village, Koyyalagudem Mandal, as illegal and arbitrary. The petitioner also seeks a consequential direction to the respondents to follow due process of law before evicting him.

This Court while admitting the writ petition on 16.03.2005 passed interim orders directing respondents not to interfere with possession of the petitioner in respect of the subject property. The fourth respondent now filed W.V.M.P.No.527 of 2006 seeking vacation of the interim order. Respondents 3 and 5 have also filed counter affidavits. Therefore, the matter is heard finally and is being disposed of by this order.

It is the case of the petitioner that from the days of his ancestors, the land and the residential house are in their occupation. The petitioner continued to be in occupation duly paying necessary taxes to Gram Panchayat. When Dokula Satyanarayana tried to interfere with his possession, the petitioner filed a suit being O.S.No.377 of 2003 on the file of the Court of the Principal Junior Civil Judge, Kovvur, for permanent injunction and obtained ad interim injunction in I.A.No.1563 of 2003. As there was an injunction order, it is alleged, Dokula Satyanarayana influenced respondents to remove encroachment and therefore, respondents without following due process of law are trying to demolish the thatched shed raised by the petitioner.

The Deputy Executive Engineer, the fourth respondent herein, who filed the counter affidavit along with W.V.M.P., denies the occupation of the land by the petitioner. However, in the counter affidavit filed by the Mandal Revenue Officer (MRO), it is stated that the petitioner and others encroached 'road poramboke land' leading from Kannapuram to Polavaram, and the petitioner is unauthorisedly

occupied an extent of Acs.0.03 cents. Dokula Satyanarayana gave a complaint to Hon'ble Lok Ayukta to remove encroachment on the road. Hon'ble Lok Ayukta ordered to take necessary action. Therefore, after making enquiries, the MRO issued notice, dated 12.03.2005, under Section 7 of A.P.Land Encroachment Act, 1905 (the Act). The petitioner refused to receive the notice. The notice was, therefore, affixed to the door of the petitioner's house.

Heard the learned counsel for the petitioner, the learned Assistant Government Pleader for Revenue (General-A) and the learned Assistant Government Pleader for R&B.

Though there is denial that the petitioner is in occupation of the land in R.S.No.211, there is a clear admission in the counter affidavit of the MRO that the petitioner has occupied land in R.S.No.87. The learned Assistant Government Pleader also submits that so far no order has been passed under Section 6 of the Land Acquisition Act, 1894 (the Act). Therefore, liberty is given to the petitioner to approach the MRO, fifth respondent and raise all objections. As and when petitioner files such representation, the same may be considered by the fifth respondent while passing orders under the Act, if such orders are not already passed. If the order of eviction is already passed by the MRO, the petitioner may obtain a copy of the same and prefer an appeal before the Revenue Divisional Officer concerned.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

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(V.V.S.RAO,J)

26.10.2006.
pln